



## Minnesota Center for Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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September 8, 2015

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**VIA U.S. & ELECTRONIC MAIL**

*Re: MCEA Comments on U.S. Steel Minntac's Section 404 Permit*

Dear Mr. Hingsberger,

I write to provide the comments of Minnesota Center for Environmental Advocacy on U.S. Steel Minntac's application for a Section 404 Permit associated with its construction of a Seepage Collection and Return System ("SC&RS") on the west side of the tailings basin. Thank you for the opportunity to comment. MCEA is a Minnesota-based non-profit environmental organization, the legal and scientific voice protecting and preserving Minnesota's wildlife, natural resources, and the health of its people. We have members across the state of Minnesota, some of whom live and recreate near the proposed project and downstream from the U.S. Steel-Minntac facility.

MCEA commented on US Steel's previous application, and our previous comments still apply. MCEA made the following recommendations in its previous comments:

- (1) That the purpose of the project be broadened to permit adequate discussion of alternatives;
- (2) That an Environmental Assessment ("EA") associated with the proposed project include a range of alternative strategies to meet this broader purpose;
- (3) That the EA consider potential impacts on groundwater, downstream surface water quality, and wetlands when evaluating those alternatives;
- (4) That the EA associated with the proposed project be released for public comment; and



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- (5) That this project not be permitted to go forward unless U.S. Steel is able to prove that it has complied with sequencing requirements, and that sufficient wetlands credits have been approved at the Palisade III or another site to mitigate the lost wetlands.
- (6) That the 404(b)(1) analysis considers a range of practicable alternatives in light of the project's purpose to reduce the impact of surface seepage on downstream water quality of the Dark River watershed.

The previous comment letter is attached, and we resubmit the same comments for consideration.

MCEA appreciates that US Steel has re-evaluated the design of its seepage collection system to minimize wetland impacts. However, that analysis should take place as part of the public record in the Environmental Assessment, not within a study by US Steel's consultant that lacks transparency and scientific rigor. Barr Engineering's analysis does not rise to the level of an Environmental Assessment, which must include a discussion of "alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted."<sup>1</sup> Moreover, Barr Engineering's work does not "*study, develop and describe* appropriate alternatives" as required in an EA.<sup>2</sup> For instance, in its Technical Memorandum dated May 8, 2015, Barr Engineering stated that it identified 18 potential designs, but based on a conversation with its client, US Steel, that apparently did not include any representative of US Army Corps of Engineers or any other regulatory agency, it eliminated 15 of the options. It identified criteria for evaluating the potential designs, but gave no further information about the designs and or how the criteria were applied.

Additionally, even within the three design alternatives that were further discussed, alternatives were dismissed based on speculation without adequate analysis. The "hydromill seepage cutoff" option was dismissed for "unknown" impacts including "migration of seeps around the cutoff reemerging in new locations, changes in downstream groundwater hydrology, and tailings basin water balance."<sup>3</sup> Barr Engineering based its recommendation on unknown risks, but did not offer any explanation as to why it did not attempt to study the risks further or why it thought they outweighed the potential water quality benefits of a more effective seepage collection system. Barr's work simply does not offer the type of transparency or scientific rigor required by the National Environmental Policy Act (NEPA).

<sup>1</sup> 40 C.F.R. § 1508.9(a).

<sup>2</sup> 42 U.S.C. § 4331(2)(E).

<sup>3</sup> Technical Memorandum from Barr Engineering to US Steel dated May 8, 2015, p. 5.



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The dilemma that US Steel faces is that its tailings basin provides the flow for the headwaters of two major watersheds (or possibly three – it appears that it also feeds Johnson Creek) but the waters it provides does not meet state water quality standards. Thus, when US Steel acts to limit the flow of polluted water out of the tailings basin, it limits the polluting effects of the basin on ground and surface water, but also affects groundwater and surface water volumes in two watersheds. Barr Engineering's work does not address this dilemma directly. Rather, Barr suggests that a seepage system that is *too* effective would have indirect wetlands and groundwater impacts, without acknowledging that the water feeding the groundwater and wetlands contains unsafe levels of various pollutants.<sup>4</sup>

Nor does Barr Engineering attempt to address any potential remedies for the downsides of decreased groundwater flow to wetlands and the Dark River. For instance, it may be possible to augment the flow with treated water. But this option was never analyzed. It is important to recognize and analyze potential trade-offs. And it is important that an independent entity, such as the Army Corps, conduct that analysis, rather than an interested consultant who may be putting too much emphasis on its client's cost, and not enough on protecting Minnesota's waters.

We also note that, as with our original comment letter, a 404(b)(1) analysis has not been completed, and would require a thorough analysis of alternatives. Finally, it does not appear as if US Steel has taken appropriate steps to prioritize mitigation opportunities within the watershed for its wetland impacts. The Palisades III site established mitigation for large-scale impacts, but the wetlands impacts here are quite small – 5.15 acres in direct impacts, with another 0.60 acres in indirect impacts, according to US Steel's application. While wetland mitigation opportunities within the watershed may be somewhat limited, wetland impacts of this magnitude could be mitigated without resorting to a large-scale site such as Palisades III.

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<sup>4</sup> See, e.g., Technical Memorandum p. 6, noting that "construction of a seepage cutoff could significantly reduce the groundwater level in adjacent wetlands and in the Dark River," and could also cause "second wetland impacts of significant scale." But nowhere does the memo note that the groundwater that feeds the wetlands and the Dark River is also polluting those sources. See MCEA Comments on US Steel 404 Permit, dated June 12, 2014, Table 1.



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In sum, MCEA continues to make the same recommendations as in its earlier comments. Please do not hesitate to contact me if you have questions.

Sincerely,

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KH/em

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